

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EFRAIN CRUZ,

Petitioner,

v.

CASE NO. 5:11-CV-111714
HONORABLE NANCY J. EDMUNDS

MONROE COUNTY MICHIGAN
PROSECUTOR OFFICE,

Respondent.

**OPINION AND ORDER DISMISSING THE PETITION FOR A WRIT OF HABEAS
CORPUS AND DENYING A CERTIFICATE OF APPEALABILITY**

The Court has before it Efrain Cruz's pro se petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Petitioner is a prisoner currently confined at a State of Florida Correctional Facility, and his petition seeks to challenge a detainer filed by the Monroe County Prosecutor. Petitioner did not pay the required filing fee when he filed his petition, nor did he submit an application to proceed in forma pauperis. See 28 U.S.C. § 1914(a); 28 U.S.C. § 1915; Rule 3 of the Rules Governing § 2254 Cases. The Court, therefore, issued an Order to Correct Deficiency on June 6, 2011 requiring Petitioner to either pay the filing fee or submit a properly completed in forma pauperis application. The order provided that if Petitioner did not submit the fee or requested information within 21 days, his case would be dismissed.

The time for submitting the filing fee or required information has elapsed and Petitioner has failed to correct the deficiency. Accordingly, the Court DISMISSES WITHOUT PREJUDICE the petition for a writ of habeas corpus. Petitioner may submit a new habeas petition with payment of the filing fee or an in forma pauperis application. The Court makes no determination as to the merits of Petitioner's claims.

Before Petitioner may appeal this decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a federal court denies a habeas claim on procedural grounds without addressing the merits, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. See *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Reasonable jurists could not debate the correctness of the Court's procedural ruling. Accordingly, the Court DENIES a certificate of appealability.

IT IS SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: July 11, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on July 11, 2011, by electronic and/or ordinary mail.

s/Carol A. Hemeyer
Case Manager